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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/583,626	05/31/2000	Zubair Mirza	602927.090085	4023

7590 11/07/2003  
AMSTER, ROTHSTEIN & EBENSTEIN  
90 PARK AVENUE  
NEW YORK, NY 10016

EXAMINER

SPISICH, MARK

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 11/07/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

CLO12

**Office Action Summary**

Application No.

09/583,626

Applicant(s)

MIRZA ET AL.

Examiner

Mark Spisich

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1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 August 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 11-13, 19-24 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 14-18, 25 and 27-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other:

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 11-13, 19-24 and 26 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

### ***Drawings***

2. Receipt is acknowledged of replacement drawing sheets 6 and 10 which were filed 19 August 2003. These drawings are approved; however, applicant is reminded that the remaining drawing sheets (although they are sufficient for examination) are informal in form.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 5, 6 and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Dirksing (USP 5,355,544). The patent to Dirksing discloses a toothbrush (20) comprising a handle (22), a head (26, 27) with bristles (28) generally extending in a first "forward" direction and extending from an end of the handle so as to pivot about a friction joint (34) at connection point (36) and further wherein the head has a first orientation (fig 2) when the brush is ready for use and prior to the application of a force exceeding a predetermined amount and has a second orientation (fig 5) rearward of the

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first upon the application of an excessive force (48) in a direction generally opposite the first direction. The brush is not "operable" when in the orientation of figure 5 and will remain in this position until placed in the first orientation by the user.

5. Claims 1,2,6,9,10,14-18,25 and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Hukuba (USP 5,406,664). The patent to Hukuba discloses (with particular attention being drawn to figures 11-13 and column 8, line 46 thru column 9, line 20) discloses a toothbrush comprising a handle portion (12), a head portion (10) with bristles (14) extending in a "forward" direction and further wherein the head portion is pivotally coupled to the handle portion (about 58) so as to move from a first orientation to a second or third position (alpha 1, 2 or 3) upon the application of an excessive force against the bristles. The structure positively defined in the claim(s) only requires that the head move from a first to a second orientation (which is rearward of the first) upon the application of an excessive force. The term "inoperable" does not define any structure.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3,4,7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hukuba (USP 5,406,664). The patent to Hukuba discloses a toothbrush comprising a handle (12) and a bristled head (10) which is "normally" in a first

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orientation (a1 in fig 11) and which, upon application of a predetermined force, pivots to a second orientation (a2 or a3). The particular angle (claims 3 and 4) and the particular amount of force (claims 7 and 8) would be obvious choices of design depending on the desired brushing pressure and desired angular relationship relative to the handle (12).

### ***Response to Arguments***

8. Applicant's arguments filed 19 August 2003 have been fully considered but they are not persuasive. The addition of the term "inoperative" has been noted but does not structurally define the claimed invention over the prior art. The claim(s) each require (1) a handle; (2) a head connected to the handle such that it is movable from a first position to a second position upon the application of an excessive force. This structure is in both the prior art devices applied against the present claims. The patent to Dirksing discloses a toothbrush wherein the head is movable from a first (fig 2) to a second (fig 5) "inoperative" position. The patent to Hukuba (fig 11) a brush comprising (1) a head (10) that pivots relative to the handle (12) from a position (a1) to a another position (a2) upon the application of an excessive force (P1) as it pivots about a pivot (58) and wherein the head includes a spring-biased ball (64) adapted to be received in one of the concave portions (68) in each of the three positions. This structure is essentially the same as that of fig 11 of the present invention. Applicant's arguments/amendment has not pointed out the **structural** difference between the device of Hukuba (and Dirksing for that matter) and the **claimed** device. One person's preferred angular relationship is another's "inoperative" one.

**Conclusion**

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (703) 308-1271. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (703) 308-2920. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



MARK SPISICH  
PRIMARY EXAMINER  
GROUP 3400

~~Mark Spisich~~